

Serial No. 10/586,100 ----- 6

### REMARKS

Claims 1-4, 8-19, 21-25, 28-31, and 33 are pending in this application.

Claim 4 has been withdrawn from prosecution at this time as being drawn to non-elected species.

Claims 2 and 8 have been amended to more clearly define the invention. No new matter is added by these Amendments.

The claims of the present application have been made subject to a restriction requirement between product claims (Group I, claims 1-4, 8-17, 24, 25, 28-31 and 33) and process claims (Group II, claims 18, 19, and 21-23). Reconsideration of the restriction requirement is respectfully requested. Applicants hereby elect to prosecute what the Examiner has identified as the invention of Group I. This election is made with traverse. Applicants also reserve the right to file one or more divisional applications on the subject matter of the non-elected claims, if the restriction requirement is not withdrawn.

The claims of the present application have also been made subject to a requirement for an election of species. According to the Office Action, the claims encompass more than one species of the generic invention. Applicants hereby elect the self-emulsifying fatty acid-derived conditioner species which is the combination of caprylic/capric triglyceride, glyceryl cocoate/citrate/lactate, and PEG-40 sorbitan oleate, as is specifically claimed in **claim 8**, as now presented of record, and which depends on claim 1. Claims 1, 2, 3, 9-17, 24, 25, 28-31, and 33 read on the elected species. This election is made without traverse.

#### The Claims Relate to a Single Inventive Concept

According to the Office Action, the inventions of Groups I and II "do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. The technical feature of Group I is a composition for treating hair. The technical feature of Group II is a method for lightening hair." In support, the Office Action states that:

The substantially anhydrous, free-flowing composition of claim 1 does not present a contribution over the prior art, as it is disclosed, and therefore anticipated, in Lorenz et al. (U.S. Patent 5,989,530). Lorenz et al. teach a dry free-flowing composition containing persulfates (column 2, lines 8-11) and fatty alcohols (column 1, lines 60-67), which anticipates the instant claim 1. As a result, as currently presented, Group I does not possess a special technical feature; therefore, it cannot share a special technical feature with Group II, and, as such,

Serial No. 10/586,100 - - - - - 7

unity between the above Groups I and II is broken.

Applicants respectfully submit that this reason for finding a lack of unity of invention is erroneous, however. Claim 1 is neither anticipated by, nor obvious over, Lorenz *et al.* Claim 1 is directed to a substantially anhydrous, free-flowing composition comprising a water-dispersible, self-emulsifying, fatty acid-derived conditioner, as defined on page 6, lines 1-7, and the composition of the present invention substantially immediately forms a conditioning hair lightener emulsion on being admixed with an aqueous medium. Contrary to the statement in the Office Action, fatty alcohols are not disclosed at column 1, lines 60-67 nor are any conditioners taught, disclosed or suggested by Lorenz *et al.* (U.S. Patent No. 5,989,530). Lorenz *et al.* teach low quantities of ethoxylated non-ionic surfactant for dust control, and do not teach conditioning or emulsion formation at all.

Furthermore, the present claims have been amended for further clarity of the water-dispersible, fatty acid-derived conditioner, which is a combination. There is no teaching or suggestion in Lorenz *et al.* of any conditioner, let alone a combination of conditioners, or of any emulsion, let alone, a conditioning emulsion. Accordingly, this reference does not, and cannot, anticipate or render obvious the present claims. Thus, the special technical features of Applicants' invention form, and contribute, a single general inventive concept over the prior art.

Withdrawal of the restriction between the compositions and method claims is hereby requested. Applicants respectfully submit that Groups I and II share a common technical feature because the process of Group II is dependent on formation of the conditioning hair lightening emulsion from the compositions of Group I, as specifically claimed in claim 16, from which the process claims of Group II depend. The claimed compositions of Group I are maintained as substantially anhydrous free-flowing components until they are admixed with a separately prepared aqueous medium to substantially immediately form a conditioning hair lightener emulsion for lightening hair. The dependent process claims of Group II meet the requirements for unity of invention *vis-a-vis* the composition claims of Group I since the claimed process cannot be practiced without the conditioning hair lightening emulsion containing all of the limitations of the product claims. Hence, the inventions of Groups I and II are linked in a manner such that they relate to single inventive concept and have the same or corresponding

Serial No. 10/586,100 ----- 8

special technical features, thereby satisfying PCT Rules 13.1 and 13.2. Furthermore, there was no indication of lack of unity of invention in the International stage of this application.

Applicants submit that Groups I and II are so closely linked that it is clear that these claims should certainly be examined together. Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement between Groups I and II.

Applicants respectfully request an early and favorable action on the merits with respect to all of the claims.

Respectfully submitted,

Dated: August 8, 2008 By Dolores T. Kenney  
Dolores T. Kenney (Reg. No. 31,269)

**CUSTOMER NO.: 002387**

OLSON & CEPURITIS, LTD.  
20 North Wacker Drive  
36th Floor  
Chicago, Illinois 60606  
(312) 580-1180